

**SUBJECT:** Prohibiting competitive bids on legal services for public bodies

**COMMITTEE:** State Affairs: favorable, without amendment

**VOTE:** 9 ayes — Laney, Seidlits, Bomer, Crawford, Eckels, Jones, Marchant, Oakley, Saunders

0 nays

1 present, not voting — Danburg

3 absent — Cain, Gibson, Perez

**WITNESSES:** For — None. (Registered in support but did not testify — Gerald J. Goff; Oliver Pennington, Fulbright & Jaworski)

Against — None

**BACKGROUND:** The Professional Services Procurement Act (PSPA) prohibits public entities from procuring certain professional services on the basis of competitive bids. The list includes the professions of accounting, architecture, optometry, medicine, land surveying and professional engineering.

In awarding contracts for these services, state agencies, cities and other public entities must consider demonstrated competence and qualifications, at "fair and reasonable prices" that are consistent with the published recommended practices and fees of the professional associations.

A public entity includes state agencies, political subdivisions, counties, cities, districts, public authorities and publicly owned utilities.

**DIGEST:** HB 1200 would add attorneys to the professions for which competitive bidding is prohibited by the PSPA.

HB 1200 would affect only those legal-service contracts entered into on or after the bill's effective date, September 1, 1991.

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**SUPPORTERS  
SAY:**

Selection of professionals on the basis of price alone, rather than on the basis of skills and experience, could buy poor service and have adverse consequences for the public. HB 1200 would ensure that attorneys performing legal work for government entities would be selected based on their qualifications for the specific job at hand, including experience and certification of specialization.

Certain professional services should not be selected by competitive bidding because of the unique nature of the profession and the wide range of possible performance questions arising after the fact. Clearly the legal profession is one that should be included — legal errors can have a devastating effect on a wide range of government functions. While most public entities do not select attorneys through bids, the law should be changed to make sure that no question arises.

**OPPONENTS  
SAY:**

Local governments should retain the option of retaining attorneys by competitive bidding if they choose. For certain routine legal work that any qualified attorney could perform, it might be appropriate to retain the competitive bidding option as a cost-saving measure.

**NOTES:**

The hiring of outside counsel by state agencies is governed by the General Appropriations Act, which requires the prior approval of the attorney general for any contracting of outside legal services. Additionally, state law stipulates that the attorney general is the lawyer for the state and consequently, all state agencies.